

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

5:07cv103

RING INDUSTRIAL GROUP, LP,)
)
 Plaintiff,)
)
 Vs.)
)
 E Z SET TANK COMPANY, INC., d/b/a)
 E-Z SET COMPANY;)
 INTERNATIONAL CUSHIONING)
 CORP.; INTERNATIONAL)
 CUSHIONING COMPANY LLC; and)
 ICC TECHNOLOGIES INC.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the court on a Certification and Report of Conference (#21), which reflects that respective counsel were unable to agree on a number of issues. Lacking a complete plan for discovery, the court will set this matter for an Initial Pretrial Conference.

As a matter of course, respective counsel are advised, in advance, that the Judges of the Western District of North Carolina expects that counsel in all cases will employ professional courtesy while zealously representing their clients.

Counsel should come prepared to discuss fully all their obligations under Rule 26, as well as the scheduling of a *Markman* hearing. To assist the parties in their preparation, the court has attached to this Order a more thorough Certificate of Initial Attorneys Conference, which the court may discuss line-by-line during the IPC.

ORDER

IT IS, THEREFORE, ORDERED that this action is set for an Initial Pretrial Conference on Friday, November 9, 2007, at 2:30 p.m. in Courtroom #2, Asheville, NC.

Signed: November 1, 2007

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
DIVISION**

Case No.: ____:____cv____

Vs.

Plaintiff(s),

Defendant(s).

**CERTIFICATE OF
INITIAL ATTORNEYS
CONFERENCE**

I. Certification of Meeting: Rule 26(f)

1. The parties met ____ in person ____ by other means on _____.
2. The parties did not meet for the following reason:
____ One or more parties is not represented by an attorney.
____ One or more parties refused to meet.
____ Other (please attach explanation)
2. ____ The parties were able to agree on the following proposals.
3. ____ The parties were unable to agree and will submit separate forms.

II. Mediation and Settlement

1. ____ The parties have conferred as to the nature and basis of their
claims and defenses and the possibilities for promptly resolving

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this case.

2. ___ The parties do not believe that mediation would be productive for the following reason:_____.
3. ___ The parties believe that amicable resolution of this matter is possible through ___ mediation ___ a judicial settlement conference or ___ another method of ADR (please specify:_____).
The proposed deadline for completion of mediation or other form of ADR is _____.
4. ___ The parties have agreed on a mediator, who is _____.
5. ___ The parties request that mediation or any other method of ADR be completed by this date:_____.

III. Initial Disclosures

1. ___ The parties have stipulated out of providing initial disclosures.
Fed.R.Civ.P. 26(a)(1)
2. ___ The parties are exempted by Fed.R.Civ.P. 26(a)(1)(E) from the disclosure requirements.
3. ___ The parties have provided each other with their initial disclosures as of the filing of this certificate .
4. ___ The parties will provide each other with initial disclosures by _____.

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IV. Preservation of Discoverable Information

1. ___ The parties have discussed steps taken by each side as to their obligations to preserve discoverable information and they **ARE** satisfied with such assurances.

2. ___ The parties have discussed steps taken by each side as to their obligations to preserve discoverable information and are **NOT** satisfied with such assurances.

___ The parties request a conference on such issue with the court.

___ The parties anticipate the filing of a Motion for Protective Order concerning preservation of discoverable evidence by this date: _____.

V. Electronically Stored Information (“ESI”)

1. ___ The parties do not desire disclosure and discovery of ESI. Instead, they will seek discovery that may be stored in electronic format through traditional discovery methods, and release each other from the additional requirements that may be applicable to ESI discovery.

2. ___ The parties desire disclosure and discovery of ESI in accordance with the methods specified for ESI under the Federal Rules of

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Civil Procedure and:

- a. ___ counsel certify that they have advised their clients and key persons of their obligation to preserve relevant or discoverable ESI while this action is pending.
 - i. ___ they have designated ESI coordinators and served the other parties with the names of such coordinators, that such coordinators were named well in advance of the IAC, and that such coordinators were present at the conference; or
 - ii. ___ they have mutually waived designation of ESI coordinators.
- b. ___ the parties have agreed as to the methods, formats, and procedures to be used and seek court approval of such agreement. (Attach agreement to this certificate) If good cause is shown therein, the court may adopt and incorporate any such agreement or protocol into the Pretrial Order by reference.
- c. ___ the parties have not agreed as to the methods, formats, and procedures to be used and will seek court intervention on ESI discovery. In furtherance of such request, the parties

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have submitted their own protocols. If good cause is shown therein, the court may adopt and incorporate any such protocol into the Pretrial Order by reference.

3. ___ The parties request that the deadline for completion of ESI discovery be _____ or that ___ it be **co-terminus** with the deadline for completion of regular discovery.

VI. Protection of Sensitive Information, and Preservation of the Work Product Privilege, the Attorney-Client Privilege, and Other Privileges.

1. ___ The parties have discussed the protection of sensitive information, and the preservation of the work-product privilege, the attorney-client privilege, and other privileges and have agreed that **NO** protective orders need to be submitted at this time. The parties reserve the right to seek issuance of protective orders at a later date, which would require the filing of a **motion** showing good cause along with any proposed protective order.
2. ___ The parties have discussed the protection of sensitive information, and the preservation of the work-product privilege, the attorney-client privilege, and other privileges and have agreed on **Protective Order(s)** to protect, preserve, and/or assert these claims even after inadvertent production. (Attach any proposed

Protective Orders) If good cause is shown therein, the court may adopt and incorporate any such agreement or protective order into the Pretrial Order by reference.

3. ___ The parties have discussed the protection of sensitive information and preservation of the work product, attorney-client, and other privileges and have **NOT** agreed on a procedure to preserve and assert these claims after inadvertent production. (Attach any proposed procedure) If good cause is shown therein, the court may adopt and incorporate any such agreement or protective order into the Pretrial Order by reference.

VII. Disclosure of Expert Testimony

1. ___ The parties do not anticipate the use of experts in this case.
2. ___ The parties **have exchanged** their designations of experts and expert reports.
3. ___ The parties **have not exchanged** designations, and request the following deadlines for designation of experts and serving expert reports:

Plaintiff(s) experts: _____

Defendant(s) experts: _____

Any rebuttal experts: _____

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Supplementation due: _____

VII. Discovery, Motions, and Trial Plan.

1. **Discovery.** The parties jointly propose the following discovery plan: (If the parties disagree as to any line item, each proposal should be set forth herein)
 - a. discovery completion: _____.
 - b. discovery completion as to the issue of _____ shall be completed by _____.
 - c. no more than _____ single part interrogatories by each party to any other party.
 - d. no more than _____ requests for admission by each party to any other party.
 - e. no more than _____ depositions of fact witnesses by any party.
2. **Motions.** The parties jointly propose that all potentially dispositive motions as well as Daubert motions be filed in this matter not later than _____.
3. **Trial.** The parties jointly propose that trial be conducted during the first trial term beginning on or after _____.
 - a. ____ The parties agree that this is for ____ jury trial ____ non-jury trial.

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- b. ___ The parties cannot agree on whether this is for jury trial.
- c. ___ The parties estimate that the trial will last _____ days.

VIII. Trial by a United States Magistrate Judge.

___ The parties have discussed the issue of consent to the jurisdiction of a United States Magistrate Judge. The parties understand that to secure the services of a United States Magistrate Judge for trial, they would need to file the [Joint Stipulation of Consent to Exercise of Jurisdiction by a United States Magistrate Judge](#) with this CIAC.

IX. Completion of Proposed Pretrial Order

___ The parties have completed a proposed Pretrial Order, and are filing it with this Certification.

___ The parties have **NOT** completed a proposed Pretrial Order for the following reason:_____.

This _____ **day of** _____, _____.

[signatures, electronic or conventional, of counsel]